

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

DAWN M. CLARK,

Plaintiff,

v.

ADT LLC d/b/a ADT SECURITY
SERVICES,

Defendant.

CIVIL COMPLAINT

CASE NO. 4:18-cv-00179

JURY DEMAND

COMPLAINT

NOW comes DAWN M. CLARK (“Plaintiff”), by and through her attorneys, Sulaiman Law Group, Ltd. (“Sulaiman”), complaining as to the conduct of ADT LLC d/b/a ADT SECURITY SERVICES (“Defendant”), as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action for damages pursuant to the Telephone Consumer Protection Act (“TCPA”) under 47 U.S.C. § 227 *et seq.* and the Texas Debt Collection Act (“TDCA”) under Tex. Fin. Code Ann. § 392 *et seq.* for Defendant’s unlawful conduct.

JURISDICTION AND VENUE

2. This action arises under and is brought pursuant to the TCPA. Subject matter jurisdiction is conferred upon this Court by 47 U.S.C § 227, 28 U.S.C. §§ 1331 and 1337, as the action arises under the laws of the United States. Supplemental jurisdiction exists for the state law claim pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as Defendant conducts business in the Eastern District of Texas and a substantial portion of the events or omissions giving rise to the claims occurred within the Eastern District of Texas.

PARTIES

4. Plaintiff is a 38 year old natural “person,” as defined by 47 U.S.C. § 153(39), residing at 7801 Tournament Road, Frisco, Texas, which lies within the Eastern District of Texas.

5. Defendant is a home security company that provides a variety of services related to residential security. Defendant is a corporation organized under the laws of the state of Delaware with its principal place of business located at 1501 Yamato Road, Boca Raton, Florida.

6. Defendant is a “person” as defined by 47 U.S.C. § 153(39).

7. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers at all times relevant to the instant action.

FACTS SUPPORTING CAUSES OF ACTION

8. The instant action arises out of Defendant’s attempts to collect upon an outstanding debt (“subject debt”) said to result from security products Plaintiff purchased from Defendant.

9. In approximately November of 2017, Plaintiff began receiving calls to her cellular phone, (407) XXX-4617, from Defendant.

10. At all times relevant to the instant action, Plaintiff was the sole subscriber, owner, and operator of the cellular phone ending in 4617. Plaintiff is and always has been financially responsible for the cellular phone and its services.

11. Defendant uses several different phone numbers when placing calls to Plaintiff’s cellular phone, including but not limited to: (855) 238-3600, (844) 691-3875, and (866) 843-0374.

12. Upon information and belief, the above referenced phone numbers are regularly utilized by Defendant during its debt collection activities.

13. During answered calls from Defendant, Plaintiff experiences a pre-recorded message directing her to hold before she is connected with a live representative.

14. Upon speaking with Defendant, Plaintiff was informed it was seeking to collect upon the subject debt.

15. Due to the harassing frequency and nature of Defendant's contact efforts, including receiving phone calls very early in the morning, Plaintiff demanded that Defendant stop calling her cell phone.

16. Plaintiff reiterated this demand on several occasions, which was often met with a hostile response from Defendant.

17. During one conversation where Plaintiff asked that the phone calls stop, Defendant's representative screamed "PAY YOUR BILL" at Plaintiff.

18. During another conversation, Defendant's representative stated that there was no way to stop the phone calls until Plaintiff addressed the subject debt.

19. Notwithstanding Plaintiff's several demands, Defendant has continued to relentlessly contact Plaintiff's cellular phone on a near daily basis up until the filing of the instant complaint.

20. Plaintiff has received not less than 30 phone calls from Defendant since asking it to stop contacting her.

21. Frustrated over Defendant's conduct, Plaintiff spoke with Sulaiman regarding her rights, resulting in expenses.

22. Plaintiff has been unfairly and unnecessarily harassed by Defendant's actions.

23. Plaintiff has suffered concrete harm as a result of Defendant's actions, including but not limited to: invasion of privacy, aggravation that accompanies collection telephone calls, emotional distress, increased risk of personal injury resulting from the distraction caused by the never-ending calls, increased usage of her telephone services, loss of cellular phone capacity, diminished cellular phone functionality, decreased battery life on her cellular phone, and diminished space for data storage on her cellular phone.

COUNT I – VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

24. Plaintiff repeats and realleges paragraphs 1 through 23 as though fully set forth herein.

25. The TCPA, pursuant to 47 U.S.C. § 227(b)(1)(iii), prohibits calling persons on their cellular phone using an automatic telephone dialing system ("ATDS") without their consent. The TCPA, under 47 U.S.C. § 227(a)(1), defines an ATDS as "equipment which has the capacity...to store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers."

26. Defendant used an ATDS in connection with its communications directed towards Plaintiff's cellular phone. During answered calls from Defendant, Plaintiff experiences a pre-recorded message directing her to hold before being connected to a live representative, which is instructive that an ATDS is being utilized to generate the calls. Furthermore, Defendant's representative's statement that the calls could not be stopped similarly suggests that an ATDS was used to place the phone calls. Even further, the nature and frequency of Defendant's contacts points to the involvement of an ATDS.

27. Defendant violated the TCPA by placing at least 30 phone calls to Plaintiff's cellular phone using an ATDS without her consent. Any consent Plaintiff *may* have given to Defendant

through her purchasing its products and services was explicitly revoked by her demands that it cease contacting her.

28. The calls placed by Defendant to Plaintiff were regarding business transactions and not for emergency purposes as defined by the TCPA under 47 U.S.C. § 227(b)(1)(A)(i).

29. Under the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(B), Defendant is liable to Plaintiff for at least \$500.00 per call. Moreover, Defendant's willful and knowing violations of the TCPA should trigger this Honorable Court's ability to triple the damages to which Plaintiff is otherwise entitled to under 47 U.S.C. § 227(b)(3)(C).

WHEREFORE, Plaintiff, DAWN M. CLARK, respectfully requests that this Honorable Court enter judgment in her favor as follows:

- a. Declaring that the practices complained of herein are unlawful and violate the aforementioned statutes and regulations;
- b. Awarding Plaintiff damages of at least \$500.00 per phone call and treble damages pursuant to 47 U.S.C. §§ 227(b)(3)(B)&(C);
- c. Awarding Plaintiff costs and reasonable attorney fees;
- d. Enjoining Defendant from further contacting Plaintiff; and
- e. Awarding any other relief as this Honorable Court deems just and appropriate.

COUNT II – VIOLATIONS OF THE TEXAS DEBT COLLECTION ACT

30. Plaintiff restates and realleges paragraphs 1 through 29 as though fully set forth herein.

31. Plaintiff is a "consumer" as defined by Tex. Fin. Code Ann. § 392.001(1).

32. Defendant is a "debt collector" as defined by Tex. Fin. Code Ann. § 392.001(6).

33. The subject debt is a "consumer debt" as defined by Tex. Fin. Code Ann. § 392.001(2) as it is an obligation, or alleged obligation, arising from a transaction for personal, family, or household purposes.

a. Violations of TDCA § 392.302

34. The TDCA, pursuant to Tex. Fin. Code Ann. § 392.302(4), states that “a debt collector may not oppress, harass, or abuse a person by causing a telephone to ring repeatedly or continuously, or making repeated or continuous telephone calls, with the intent to harass a person at the called number.”

35. Defendant violated the TDCA when it continued to call Plaintiff’s cellular phone at least 30 times after she notified it to stop calling. The repeated contacts were made with the hope that Plaintiff would succumb to the harassing behavior and ultimately make a payment on the subject debt. The nature and volume of phone calls would naturally cause an individual to feel oppressed, especially when such calls are placed after an individual has made it clear that the calls are inconvenient. Defendant’s intent to harass Plaintiff is further evident through the comments made by Defendant’s representatives during conversations between Plaintiff and Defendant.

36. Upon being told to stop calling several times, Defendant had ample reasons to be aware that it should not continue its harassing campaign of collection calls to Plaintiff. Yet, Defendant consciously chose to continue placing calls to Plaintiff’s cellular phone.

WHEREFORE, Plaintiff, DAWN M. CLARK, respectfully requests that this Honorable Court enter judgment in her favor as follows:

- a. Declaring that the practices complained of herein are unlawful and violate the aforementioned statutes and regulations;
- b. Entitling Plaintiff to injunctive relief pursuant to Tex. Fin. Code Ann. § 392.403(a)(1).
- c. Awarding Plaintiff actual damages, pursuant to Tex. Fin. Code Ann. § 392.403(a)(2).
- d. Awarding Plaintiff punitive damages, in an amount to be determined at trial, for the underlying violations;
- e. Awarding Plaintiff costs and reasonable attorney fees, pursuant to Tex. Fin. Code Ann. § 392.403(b);

f. Awarding any other relief as this Honorable Court deems just and appropriate.

Dated: March 19, 2018

Respectfully submitted,

s/ Nathan C. Volheim

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